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9
10 **UNITED STATES DISTRICT COURT**

11 **NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

12 IN RE LITHIUM ION BATTERIES
13 ANTITRUST LITIGATION

CASE NO. CV 13-md-2420-YGR

14 **CLASS ACTION**

15 **APPLICATION FOR APPOINTMENT OF**
16 **PEARSON, SIMON & WARSHAW, LLP,**
17 **SAVERI & SAVERI, INC., AND BERMAN**
DEVALERIO AS INTERIM CO-LEAD
COUNSEL FOR DIRECT PURCHASER
PLAINTIFFS, AND ZELLE HOFMANN
VOELBEL & MASON LLP AS LIAISON
COUNSEL

18 Date: April 3, 2013

19 Time: 2:00 p.m.

20 Crtrm.: 5

21 The Honorable Yvonne Gonzalez Rogers
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1 Pursuant to the Order Setting Initial Conference (Dkt. No. 8), ¶ 6(a) and (b), the
2 undersigned counsel make an application for an order appointing interim co-lead counsel and
3 liaison counsel for the Direct Purchaser Plaintiffs. Accompanying this application is a proposed
4 order appointing the law firms of Pearson, Simon & Warshaw, LLP, Saveri & Saveri, Inc., and
5 Berman DeValerio as Interim Co-Lead Counsel for the Direct Purchaser Plaintiffs, as well as
6 Plaintiffs' Steering Committee, and Zelle Hofmann Voelbel & Mason LLP as Liaison Counsel for
7 the Direct Purchaser Plaintiffs. Also accompanying this application are declarations and exhibits
8 from each of the proposed Co-Lead Counsel and Liaison Counsel submitted in support of the
9 proposed leadership structure.

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I. INTRODUCTION

There are 25 direct purchaser actions filed in this litigation that were either originally filed in this District or filed elsewhere and transferred to this Court by the Judicial Panel on Multi-district Litigation ("JPML"). This application is brought by counsel in 23 of the 25 direct purchaser actions to respectfully request the appointment of the law firms Pearson, Simon & Warshaw, LLP ("Pearson Simon"), Saveri & Saveri, Inc. ("Saveri & Saveri"), and Berman DeValerio as interim co-lead counsel for the proposed class of Direct Purchaser Plaintiffs ("DPPs"), and as Plaintiffs' Steering Committee, and to appoint Zelle Hofmann Voelbel & Mason LLP ("Zelle Hofmann") as liaison counsel for this consolidated multidistrict litigation ("MDL"). Proposed interim co-lead counsel and proposed liaison counsel have decades of experience in MDL antitrust cases and have been lead counsel in some of the largest antitrust actions brought in this District and elsewhere throughout the country. Significantly, in accordance with the Order Setting Initial Conference ("CMC Order") (13-md-2420-YGR, Dkt. No. 8), the three proposed interim co-lead counsel firms have obtained the near-unanimous consensus of all 25 DPP cases on file. The consensus group of counsel for 23 of the 25 DPP cases supports the leadership structure proposed in this application. *See* Exhibit A hereto. As a result, not only do the proposed interim co-lead firms fulfill, and indeed exceed, the requirements of Rule 23(g) of the Federal Rules of Civil Procedure, they bring to this case a cohesive working group of counsel capable of best representing the class of DPPs. It is noteworthy that many of the firms supporting this application are themselves among the most experienced and qualified in prosecuting complex antitrust cases like this one. Starting a case in this manner, with interim co-lead counsel speaking for almost all of the cases, will yield dividends immediately by permitting the cost-effective and efficient prosecution of this case.

The proposed interim co-lead and liaison counsel firms have a proven track record of experience, knowledge, commitment of resources, and success in large antitrust class-action cases which they will bring to bear in this litigation. In addition, these firms have thoroughly investigated this matter prior to filing, including the retention of economic consultants to evaluate the market and available data about prices for the subject products. Notably, Pearson Simon

1 represents the Liquidating Trustee of the Circuit City Stores, Inc. Liquidating Trust. Circuit City
 2 purchased more than \$50 million of lithium ion batteries directly from the named defendants
 3 during the proposed class period. The Liquidating Trustee has brought other individual antitrust
 4 actions on behalf of the Trust, and in connection with those cases has substantial experience
 5 managing outside counsel for the type of litigation now before this Court. The Liquidating
 6 Trustee supports this leadership structure.¹ In addition, Saveri & Saveri represents six separate
 7 clients in this matter including Ritz Camera & Image, LLC, another very large purchaser of
 8 lithium ion batteries. It is also noteworthy that Berman DeValerio, which in other contexts
 9 represents some of the largest public pension funds in the world, also represents a very substantial
 10 seller of electronic equipment that has experience as a named plaintiff in other antitrust cases.

11 Equally important, Pearson Simon, Saveri & Saveri, and Berman DeValerio all have a long
 12 history of working effectively with each other and other plaintiffs' counsel. They are ready and
 13 able to act as interim co-lead counsel in this matter. They respectfully ask that the Court appoint
 14 them to serve in this capacity, and also appoint Zelle Hofmann as liaison counsel. Judith A. Zahid
 15 of Zelle Hofmann will be the principal spokesperson on liaison matters with the Court. Zelle
 16 Hofmann, with its San Francisco and national presence, and Ms. Zahid bring a wealth of
 17 experience and an outstanding track record in complex class action cases, including large antitrust
 18 class actions.

19 **II. PROCEDURAL HISTORY**

20 The first complaint in this consolidated action was filed on October 3, 2012. *See Young, et*
 21 *al. v. LG Chem, Ltd., et al.*, No. 12-cv-5129. Numerous complaints have since been filed on
 22 behalf of both DPPs and indirect purchaser plaintiffs ("IPPs"). On October 16, 2012, a motion
 23 was made before the JPML to transfer all actions to the District of New Jersey. Proposed interim
 24 co-lead counsel each supported consolidation, opposed the transfer to New Jersey, and advocated

25 ¹ Declaration of Plaintiff Alfred H. Siegel, Solely in his Capacity as Trustee of the Circuit City
 26 Stores, Inc. Liquidating Trust, in Support of Application for Appointment Of Pearson, Simon &
 27 Warshaw, LLP, Saveri & Saveri, Inc., Berman DeValerio as Interim Co-Lead Counsel for Direct
 28 Purchaser Plaintiffs, and Zelle Hoffmann as Liaison Counsel, at ¶ 9.

1 transfer to this District.

2 An initial Case Management Conference was scheduled before this Court for January 28,
3 2013. *See* December 5, 2012 Clerk's Notice Setting Case Management Conference (Case No.
4 4:12-cv-05681, Dkt. No. 7). On January 4, 2013, Defendants jointly moved to continue the Case
5 Management Conference pending the outcome of the JPML hearing. *See* Defendants' Joint
6 Administrative Motion To Continue Case Management Conference (Case No. 12-cv-05678, Dkt.
7 No. 10). The Court granted that motion and continued the initial case management conference to
8 March 18, 2013. *See* January 18, 2013 Order Granting Defendants' Joint Administrative Motion
9 To Continue Case Management Conference (Case No. 12-cv-5129, Dkt. No. 49).

10 The JPML heard oral argument on January 31, 2013. On February 6, 2013, the JPML
11 issued a Transfer Order in *In re Lithium Ion Batteries Antitrust Litig.*, MDL No. 2420, transferring
12 an action pending in the District of New Jersey to this Court, and finding that "centralization of all
13 actions in the Northern District of California will serve the convenience of the parties and
14 witnesses and promote the just and efficient conduct of this litigation." (MDL No. 2420, Dkt. No.
15 122.) On February 12, 2013, the JPML conditionally transferred to this Court an additional six
16 cases from the Southern District of California, one case from the District of Massachusetts, one
17 case from the District of Minnesota, and 18 cases from the District of New Jersey. (MDL No.
18 2420, Dkt. No. 123.)

19 On March 4, 2013, the Court issued its CMC Order. The CMC Order directed counsel to
20 appear for a conference on April 3, 2013 at 2:00 p.m., and set forth a tentative agenda, including
21 the appointment of lead counsel. CMC Order, Exhibit A. The CMC Order also directed counsel
22 to "confer and seek consensus on the selection of a candidate for the position of liaison counsel"
23 and a plaintiffs' steering committee ("PSC"). *Id.*

24 Pursuant to the CMC Order, counsel for DPPs have met individually and as a group to
25 discuss efficient and effective case management, and to confer on a leadership structure best suited
26 to the "just, speedy, and inexpensive determination" of the litigation. Despite best efforts, most
27
28

1 but not all DPPs' counsel reached consensus. Plaintiffs' counsel in all but two of the DPP cases,
2 however, support the leadership structure proposed here. *See* Exhibit A (hereto).²

3 **III. ARGUMENT**

4 Rule 23 provides that a court "may designate interim counsel to act on behalf of the
5 putative class before determining whether to certify the action as a class action." Fed. R. Civ. P.
6 23(g)(3). The goal is to determine who best will represent the interests of the class, and who best
7 will be able to accomplish the goals of efficiency and economy in doing so. *See Coleman v.*
8 *General Motors Acceptance Corp.*, 220 F.R.D. 64, 100 (M.D. Tenn. 2004); *see also* MANUAL FOR
9 COMPLEX LITIGATION (FOURTH) § 10.221 (2004) ("MANUAL"). Where, as here, multiple cases are
10 pending, "appointment of class counsel is necessary to protect the interests of class members."
11 *Donaldson v. Pharmacia Pension Plan*, 435 F. Supp.2d 853, 856 (2006); *see also In re Air Cargo*
12 *Shipping Servs. Antitrust Litig.*, 240 F.R.D. 56 (E.D.N.Y. 2006).

13 In complex antitrust matters such as this, appointing seasoned lead counsel is one of the
14 district court's key organizational tools. MANUAL §§ 10.224, 21.272. The "designation of interim
15 [class] counsel clarifies responsibility for protecting the interests of the class during
16 precertification activities, such as making and responding to motions, conducting any necessary
17 discovery, moving for class certification, and negotiating settlement." *Id.* § 21.11. Because lead
18 counsel is charged with the ultimate responsibility of acting on behalf of the class throughout the
19 entire litigation, the Court must appoint lead counsel who are fully capable and qualified to fairly
20 and adequately represent the interests of the class. *See id.* §§ 10.22, 21.271, 21, 272; *see also* Fed.
21 R. Civ. Proc. 23(g)(2) (noting that "the court must appoint the applicant best able to represent the
22 interests of the class" if more than one qualified applicant seeks to be appointed class counsel).

23 Rule 23(g) and this Court's CMC Order identify several factors that merit consideration in
24 selecting interim class counsel. *See* Fed. R. Civ. P. 23(g)(1)(A); CMC Order at 5:11-19 (setting
25 _____

26 ² The only two cases not supporting the leadership structure proposed here are *Barbat v. LG*
27 *Chem, Ltd., et al.*, No. 4:13-cv-00782-YGR (N.D. Cal.), and *Brownlee v. LG Chem, Ltd., et al.*,
28 No. 4:13-cv-00783-YGR (N.D. Cal.).

forth the main criteria for membership in Plaintiffs' Steering Committee); *Air Cargo Shipping Services Antitrust Litig.*, 240 F.R.D. 56, 57 (E.D.N.Y. 2006) (applying Rule 23(g) criteria in selecting interim class counsel); *Parkinson v. Hyundai Motor America*, 2006 WL 2298801, at *2 (C.D. Cal. Aug. 7, 2006) (same). These factors include: (a) counsel's willingness and availability to commit to a time-consuming project; (b) counsel's ability to work co-operatively with others; (c) counsel's qualifications, including experience in managing complex litigation and knowledge of the subject matter; and (d) counsel's efforts in researching and investigating the claims before the court. The Court may also consider "any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class. *See* Fed. R. Civ. Proc. 23(g)(1)(B). As demonstrated below, Pearson Simon, Saveri & Saveri, and Berman DeValerio more than satisfy all of the relevant criteria.

A. The proposed Interim Co-Lead Class Counsel are willing and available to commit to the time-consuming project of leading this case.

Pearson Simon, Saveri & Saveri, and Berman DeValerio have demonstrated they are willing to commit the resources and time necessary to litigate a complex class action such as this one, as they have done in many other cases.

For example, Pearson Simon acted as co-lead counsel for the direct purchaser class in *In re TFT-LCD (Flat Panel) Antitrust Litigation* (N.D. Cal. MDL No. 1827) ("*TFT-LCD*"), obtaining \$473 million in settlements with some of the same defendants sued here. In 2012, Pearson Simon and their co-lead counsel tried the case to a successful \$87 million jury verdict before trebling. Declaration of Bruce L. Simon, filed herewith ("Simon Decl.") at ¶ 8. Both Saveri & Saveri and Berman DeValerio worked with Pearson Simon in *TFT-LCD*. Along with co-lead counsel, Pearson Simon managed discovery of roughly 8 million documents consisting of over 40 million pages, and oversaw as many as 136 document reviewers working concurrently. *Id.*, ¶ 10. Approximately 1.5 million foreign language documents were identified, and nearly half were reviewed by foreign language reviewers. *Id.* The direct purchaser class served 184 sets of discovery requests, responded to 75, and engaged in extensive discovery motion practice before a special master. *Id.* Counsel took and defended more than 130 depositions: 50 in San Francisco,

40 elsewhere across the country, and 41 outside of the United States. *Id.* In all, counsel incurred over \$11 million in costs and contributed over 250,000 hours of work on the case, prior to trial. *Id.* The Court credited counsel's work as an "excellent result obtained for the Class" after more than five years of litigation. *Id.*, Exhibit A. The Court noted that counsel did "an excellent job in this case handling what has been a really enormous and cumbersome process." *Id.*

Saveri & Saveri started its investigation into this matter in June of 2011. This investigation included among other things, reviewing industry materials regarding the lithium ion battery industry, researching industry data, and retaining consultants to review the economic evidence of the alleged conspiracy. On October 11, 2012, Saveri & Saveri, Inc. filed the first and second cases in the country on behalf of direct purchasers of lithium ion batteries alleging violations of the antitrust laws in the Northern District of California. *See, Carte v. Samsung SDI Co., Ltd., et al.*, No. 12-5268 YGR; filed Oct. 11, 2012 ("*Carte*") and *Gray v. Samsung SDI Co., Ltd., et al.*, No. 12-5274 YGR; filed Oct. 11, 2012 ("*Gray*"). All other direct purchaser cases followed these two original complaints. In addition to the *Carte* and *Gray* complaints, the Saveri firm represents plaintiffs in *Nelson v. Samsung SDI Co., Ltd., et al.*, No. 12-05516 YGR; filed Oct. 25, 2012 ("*Nelson*"); *Wilson v. Samsung SDI Co., Ltd., et al.*, No. 12-6210 YGR; filed Dec. 7, 2012 ("*Wilson*"); *Ritz Camera & Image, LLC v. Samsung SDI Co., Ltd., et al.*, No. 13-0213 YGR; filed Jan. 15, 2013 ("*Ritz*"); and *Walner v. Samsung SDI Co., Ltd., et al.*, No. 13-1298 MEJ; filed March 22, 2013 ("*Walner*"). In total, Saveri & Saveri represents six of the twenty-five DPPs coordinated in this MDL. Saveri & Saveri's firm resume is attached as Exhibit A to the Declaration of R. Alexander Saveri, submitted herewith.

Berman DeValerio is a national law firm with forty attorneys in offices on both the west coast and east coast. The firm has litigated class actions in this District and in courts around the country for thirty years, and has been appointed by courts to serve as lead or co-lead counsel in scores of complex antitrust, securities and consumer class actions. The firm regularly represents institutions, corporations and consumers in class and non-class litigation. Here, Berman DeValerio has been retained by Univision-Crimson Holding, Inc., which through its subsidiaries provides professional audio, video, teleconferencing, presentation and multi-media equipment.

1 Berman DeValerio presently serves as lead or co-lead counsel in several pending class
 2 actions, including, *In re BP, PLC Sec. Litig.*, 10-md-2185 (S.D. Tex.), *In re IndyMac Mortgage-*
 3 *Backed Litig.*, 09-cv-4583 (S.D.N.Y.), *In re Online DVD Rental Antitrust Litig.*, 09-md-2029
 4 (PJH) (N.D. Cal.), *Trabakoolas v. Watts Water Technologies, Inc.*, 4:12-cv-01172 (YGR),
 5 *Wallach v. Eaton Corp.*, 10-260-SLR (D. Del.) and as Steering Committee for Direct Purchaser
 6 Plaintiffs in *In re Optical Disk Drives Antitrust Litig.* 3:10-md-02143-RS (N.D. Cal.). Berman
 7 DeValerio's biographical materials are attached as Exhibit A to the Declaration of Joseph J.
 8 Tabacco, Jr. ("Tabacco Decl."), submitted herewith.

9 As these examples amply illustrate, Pearson Simon, Saveri & Saveri, and Berman
 10 DeValerio already have worked to identify, investigate and litigate the claims in this action, and
 11 are all willing and able to commit to the time-consuming project of leading this case, as they have
 12 done many times previously.

13 **B. The proposed Interim Co-Lead Class Counsel are able to work cooperatively with**
 14 **others in this matter.**

15 While the three firms proposed here believe they can provide the most fair and adequate
 16 leadership structure for the class, they have an inclusive management style and will seek the
 17 participation of the many other firms involved in this litigation. This is best evidenced by the
 18 number of firms that support the proposed leadership structure. As stated above, Counsel for
 19 plaintiffs in 23 out of the 25 filed DPP cases support this application for appointment of Pearson
 20 Simon, Saveri & Saveri and Berman DeValerio as interim co-lead counsel for DPPs. Proposed
 21 interim co-lead class counsel are committed to a cooperative approach among all counsel and,
 22 with the permission of the Court, they will work as Plaintiffs' Steering Committee to establish
 23 appropriate committees or working groups of counsel to ensure that the class is adequately
 24 represented and that the consensus among counsel is maintained. Simon Decl., ¶ 33. In doing so,
 25 proposed interim co-lead class counsel will strive to be efficient and to avoid waste and
 26 duplication.

27 Before filing this motion, the three proposed interim co-leads made significant effort to
 28 reach 100% consensus among DPPs so that a proposed leadership structure could be presented to

the Court as a proposed stipulation and order, instead of through competing applications. Counsel for one of the two cases that declined to support this proposed leadership structure was offered a significant litigation role within the consensus group. Although an agreement was unfortunately not reached with one outlier counsel and his co-counsel, all of the firms supporting this application were able to reach a consensus. Simon Decl., ¶¶ 26, 29-31. The fact that consensus has been reached is an achievement, for any number of the firms that have agreed to this structure could have served as lead counsel in this case, but they stepped back in favor of DPPs proceeding in a unified fashion so that the focus can be on litigating this case against Defendants for the best interests of the class.

C. The proposed Interim Co-Lead Class Counsel have substantial experience handling complex antitrust class actions.

As the following discussion and the attachments to the Declarations of Bruce L. Simon, R. Alexander Saveri and Joseph J. Tabacco, Jr. demonstrate, Pearson Simon, Saveri & Saveri, and Berman DeValerio have substantial experience handling complex antitrust class actions; they have served as lead or co-lead counsel in numerous antitrust class actions; and, they are highly knowledgeable regarding the applicable law. This prong of the Court's analysis is easily satisfied.

1. Pearson, Simon & Warshaw, LLP

Pearson Simon is a civil litigation firm that specializes in class actions, with offices in San Francisco and Los Angeles. Pearson Simon handles national and multi-national class actions that present cutting-edge issues in both substantive and procedural areas. The firm's attorneys have expertise in litigating difficult and large cases in an efficient and cost-effective manner. Recognized as national leaders in the field of antitrust litigation, they have obtained hundreds of millions of dollars in settlements and verdicts on behalf of their clients. Attorneys at Pearson Simon serve as co-lead counsel in such prominent cases as *TFT-LCD* and *In re Potash Antitrust Litigation (II)* (N.D. Ill. MDL No. 1996) ("*In re Potash*"), and hold, or have held, leadership roles in various other notable complex antitrust and class-actions, including *In re Static Random Access Memory (SRAM) Antitrust Litigation*, No. M:07-cv-01819 (N.D. Cal. 2007); *In re Cathode Ray Tube (CRT) Antitrust Litigation*, No. CV-07-5944 (N.D. Cal. 2007); and *In re Optical Disk Drive*

1 *Products Antitrust Litigation*, No. 3:10-md-2143 (N.D. Cal. 2010). *See generally* Simon Decl. Ex.
2 B.

3 The attorneys who will be primarily responsible for the adjudication of this case are Bruce
4 L. Simon and Robert Retana, along with Aaron M. Sheanin, William J. Newsom, and other
5 attorneys as required.

6 **Bruce L. Simon**

7 Mr. Simon specializes in complex cases involving antitrust, securities, and consumer
8 protection laws. Mr. Simon has been recognized for his service as co-lead counsel and trial
9 counsel for the direct purchaser plaintiffs in *TFT-LCD*. After reaching settlements with several
10 defendants totaling over \$405 million, Mr. Simon and his trial team tried the case to an \$87
11 million dollar verdict (before trebling) against Toshiba. Mr. Simon served as co-lead trial counsel,
12 successfully marshaled numerous witnesses, and presented the opening argument. Another \$68
13 million was recovered for class members through settlements with Toshiba after trial and with
14 another defendant on the eve of trial, for a total recovery of \$473 million for the direct purchaser
15 class. Simon Decl., ¶ 8. In 2013, *California Lawyer Magazine* awarded Mr. Simon a California
16 Lawyer of the Year Award for his work in the *TFT-LCD* case. The verdict in that case was cited
17 by the *Daily Journal* as one of the top 10 verdicts of the year. *Id.*

18 Mr. Simon serves as co-lead counsel for the direct purchaser plaintiffs in *In re Potash*.
19 There, Mr. Simon successfully argued an appeal of the district court's opinion denying the
20 defendants' motions to dismiss for lack of subject matter jurisdiction under the Foreign Trade
21 Antitrust Improvements Act ("FTAIA") before the United States Court of Appeals for the Seventh
22 Circuit. In *Minn-Chem, Inc. v. Agrium, Inc.*, 683 F.3d 845 (7th Cir. 2012), the Seventh Circuit,
23 sitting *en banc*, took a broad view of the ability of the federal courts to hear antitrust cases
24 concerning alleged foreign cartel activity that plaintiffs contend has effects in the United States.
25 This is a significant decision pertaining to an issue that arises in most antitrust cases involving
26 international cartels. Subsequently, the direct purchasers reached settlements totaling \$90 million.

27 Mr. Simon was recently appointed interim co-lead counsel in *In re Carrier IQ Consumer*
28 *Privacy Litigation*, MDL No. 2330 (N.D. Cal.), by the Honorable Edward Chen and was

1 appointed chairman of a five-firm committee serving as interim co-lead counsel in *Sledge v.*
 2 *Warner Music Group Corp.*, No. 12-cv-00559-RS (N.D. Cal.) by the Honorable Richard Seeborg.
 3 Simon Decl., ¶ 13. Mr. Simon has served as lead or co-lead counsel in several other successful
 4 nationwide class actions in this District including *In re Sodium Gluconate Antitrust Litigation*,
 5 MDL No. 1226 (N.D. Cal.); *In re Methionine Antitrust Litigation*, MDL No. 1311 (N.D. Cal.)
 6 (over \$100 million in settlements); *In re Citric Acid Antitrust Litigation*, MDL No. 1092 (N.D.
 7 Cal.) (\$80 million in settlements). *Id.*, ¶ 14. Mr. Simon also served as co-chair of discovery and
 8 as a member of the trial preparation team in *In re Dynamic Random Access Memory (DRAM)*
 9 *Antitrust Litigation*, MDL No. 1486 (N.D. Cal.) (\$325 million in settlements).

10 **Robert G. Retana**

11 Robert G. Retana is an accomplished litigator, with both civil and criminal experience and
 12 significant trial experience. Mr. Retana worked as a civil litigator at the Heller, Ehrman firm in
 13 San Francisco where he handled large, complex litigation. He served as an Assistant District
 14 Attorney for the City and County of San Francisco, where he was the Assistant Supervisor of the
 15 Misdemeanor Trial Division and a member of the Felony Domestic Violence Unit. As an
 16 Assistant District Attorney, he tried dozens of cases before a jury and handled hundreds of
 17 hearings. He then worked as a litigator at Cotchett Pitre & Simon where he handled complex
 18 individual and class actions on behalf of plaintiffs involving securities and antitrust matters,
 19 including a three month civil trial in Los Angeles Superior Court. Mr. Retana next worked as an
 20 attorney for the Administrative Office of the Courts in the Litigation Management Unit, was a
 21 named partner at Oliver, Sabec & Retana, and has served as a Judge *Pro Tem* in San Mateo
 22 County. Simon Decl., ¶ 19.

23 At Pearson Simon, Mr. Retana was a member of the pretrial and trial team in *TFT-LCD*
 24 and has worked extensively on *In re Potash*. He is currently counsel in two proposed class actions
 25 involving Ponzi schemes: *Arreola v. Bank of America, N.A., et al.* (Central District of California
 26 Case No. 11-CV-06237 FMO) (Ponzi scheme targeting members of the Los Angeles Latino
 27 community) and *Uecker v. Wells Fargo Capital Finance, LLC* (Northern District of California
 28 Bankruptcy Court Case No. 11-49-RLE-11) (Ponzi scheme involving investments in real estate

1 loans). Simon Decl., ¶ 20.

2 **2. Saveri & Saveri, Inc.**

3 Saveri & Saveri has extensive experience in class action litigation involving antitrust
4 claims in this District and around the United States. The Saveri firm has been appointed sole
5 Interim Lead Counsel pursuant to rule 23(g) on behalf of the direct purchaser class in *CRT*.
6 Settlements to date total \$81 million with two defendant groups remaining and discovery is
7 ongoing. In addition, Saveri & Saveri was appointed chairman of plaintiffs' executive committee
8 in *In re Optical Disk Drive Products Antitrust Litigation*, MDL No. 2143; 10-md-02143-RS (N.D.
9 Cal.) (Seeborg, J.) ("*ODD*"). Settlements to date total \$26 million and discovery is ongoing.
10 Importantly, most of the defendants in this case are identical to or affiliated with the defendants in
11 *CRT* and *ODD* – *i.e.* LG, Samsung, Panasonic, and Hitachi. Saveri & Saveri is extensively
12 familiar with these companies' corporate structures, their documents and data procedures, their
13 witnesses and the counsel representing them. Many of the witnesses being deposed in *CRT* will be
14 deposed again in *Lithium Ion Batteries* because they were involved in both products. This close
15 relationship between *Lithium Ion Batteries*, *ODD* and *CRT* makes Saveri & Saveri uniquely
16 qualified to serve as Interim Lead Counsel.

17 In addition to *CRT* and *ODD*, Saveri & Saveri was appointed Interim Co-Lead counsel on
18 behalf of the direct purchaser class in *In re Dynamic Random Access Memory (DRAM) Antitrust*
19 *Litigation*, MDL No. 1486; 02-md-1486-PJH (N.D. Cal.) (Hamilton, J.) ("*DRAM*") and *In re*
20 *Flash Memory Antitrust Litigation*, 07-cv-00086-SBA (N.D. Cal.) (Armstrong, J.) ("*Flash*").
21 Both *DRAM* and *Flash* involve allegations of price fixing in the DRAM memory chip industry and
22 the Flash memory industry, respectively. Once again, several of the defendants in *DRAM* and
23 *Flash* are also in this litigation – namely, Samsung and Hitachi.

24 In addition, Saveri & Saveri served on plaintiffs' executive committee in *TFT-LCD* and
25 *SRAM*. As noted above, *TFT-LCD* and *SRAM* are additional electronics antitrust class actions
26 involving many of the same defendants as *Lithium Ion Batteries*.

27 In addition to *CRT*, *ODD*, *Flash*, and *DRAM*, Saveri & Saveri has been appointed Co-Lead
28 Counsel in numerous other cases in this District, including *In re Methionine Antitrust Litigation*,

MDL No. 1311, (N.D. Cal.) (Breyer, J.) (“*Methionine*”) (A nationwide class action on behalf of direct purchasers of methionine alleging antitrust price-fixing. The case was settled for \$107,000,000.); *In re Citric Acid Antitrust litigation*, MDL No. 1092, C-95-2963 (N.D. Cal.) (Smith J.) (“*Citric Acid*”) (A certified direct purchaser class of purchasers of citric acid alleging violations of the Sherman Act for fixing the price of citric acid in the United States and around the world. The case was settled for \$86,000,000.); and Chair of Plaintiffs’ Counsel in *In re Tableware Antitrust Litigation*, Case No. C04-3514 VRW (N.D. Cal.) (Walker, J.) (A certified class action on behalf of a nationwide class of purchasers of tableware. This case was tried to verdict.).

Saveri & Saveri is uniquely qualified to represent the interests of the direct purchasers in light of its extensive experience handling recent antitrust cases involving similar electronic products against many of the very same Defendants. Partners Guido Saveri, R. Alexander Saveri, and Cadio Zirpoli will handle this matter. They will be assisted by associates Carl N. Hammarskjold, David Hwu, and Travis Manfredi.

R. Alexander Saveri

R. Alexander Saveri is the managing partner of Saveri & Saveri, Inc. He has specialized in antitrust class actions for more than eighteen years. He is currently the lead attorney for Saveri & Saveri regarding *CRT*. In addition to *CRT* Mr. Saveri was a member of the trial team that tried *In re Tableware Antitrust Litigation*, (N.D. Cal., Case No. C04-3514 VRW) to verdict before United States District Court Chief Judge Vaughn R. Walker. He has served, or is serving, as court appointed co-lead or liaison counsel in many antitrust cases, including *In re Intel Corp. Microprocessor Antitrust Litigation* (D. Del., MDL No. 1717), an MDL proceeding on behalf of consumers who purchased Intel x86 microprocessors; *In re Vitamin C Antitrust Litigation* (E.D.N.Y., MDL No. 1738); and *In re California Title Insurance Antitrust Litigation*, Case No. 08-01341 JSW, (N.D. Cal.) (White, J.). Mr. Saveri was also co-liaison counsel and a member of the plaintiffs’ executive committee in the *Smokeless Tobacco Cases*, (J.C.C.P. No. 4250), which settled for \$96 million on behalf of consumers in the State of California

Carl N. Hammarskjold

Mr. Hammarskjold graduated *summa cum laude* in 2011 from the University of San

1 Francisco School of Law and was a Judicial Extern for the Honorable William Alsup of the
 2 Northern District of California. Since joining Saveri & Saveri, Mr. Hammarskjold has worked
 3 extensively on antitrust matters including *Kleen Products, LLC, et al. v. Packaging Corporation of*
 4 *America, et al. (Container Board)*, Case No. 1:10-cv-05711; *ODD*; and *In re Chocolate*
 5 *Confectionary Antitrust Litigation*, MDL No. 1935.

6 **3. Berman DeValerio**

7 Berman DeValerio is a national law firm with forty attorneys on the west coast and east
 8 coast with over thirty years' class action experience. *See* Tabacco Decl., Exh. A. It has the ability
 9 and willingness to dedicate the necessary resources to litigate this action. Partners Joseph J.
 10 Tabacco, Jr. and Todd A. Seaver will handle the litigation responsibilities, assisted by associate
 11 attorneys Victor Elias and Sarah Khorasane McGrath, and other attorneys and/or professional
 12 staff as required.

13 **Joseph J. Tabacco, Jr.**

14 Mr. Tabacco has served as trial or lead counsel in numerous antitrust and securities cases.
 15 Tabacco Decl. ¶ 8. Prior to 1981, Mr. Tabacco served as senior trial attorney for the U.S.
 16 Department of Justice, Antitrust Division, in both the Central District of California and the
 17 Southern District of New York. He actively litigates antitrust, securities fraud, commercial high
 18 tech and intellectual property matters. He frequently lectures and authors articles on securities and
 19 antitrust law issues and is a member of the Advisory Board of the Institute for Consumer Antitrust
 20 Studies at Loyola University Chicago School of Law. Mr. Tabacco is a former teaching fellow of
 21 the Attorney General's Advocacy Institute in Washington, D.C., and has served on the faculty of
 22 ALI-ABA on programs about U.S.-Canadian business litigation and trial of complex securities
 23 cases. *Id.* at ¶¶ 8-9.

24 Mr. Tabacco has served as lead or co-lead counsel in significant antitrust class actions,
 25 including the landmark recovery against DeBeers (*Sullivan v. DB Investments Inc.*, 04-02819
 26 (D.N.J.) (\$295 million settlement), *In re Sorbates Direct Purchaser Antitrust Litigation*; C 98-
 27 4886 (N.D. Cal.) (\$96.5 million in settlements), and *In re Cardizem CD Antitrust Litigation*, 99-
 28 MD-1278 (E.D. Mich.) (\$80 million settlement). He was lead counsel representing the State of

Michigan Retirement Systems in *In re Bear Stearns Cos. Inc. Sec., Derivative, & ERISA Litig.*, which settled in 2012 for \$294.9 million. Mr. Tabacco has tried a number of cases, each of which resolved successfully at various points during or after trial, including *In re MetLife Demutualization Litig.* (settled after jury empanelled), *Gutman v. Howard Savings Bank* (plaintiffs' verdict after six-week trial), *In re Equitec Sec. Litig.* (settled after six months of trial) and *In re Ramtek Sec. Litig.* *Id.* at ¶9.

Todd A. Seaver

Todd A. Seaver is an experienced litigator with Berman DeValerio who is experienced in handling class actions and other complex litigation, including claims of the type asserted in this action. Tabacco Decl., ¶10. Mr. Seaver was court-appointed lead counsel in *In re New Motor Vehicles Canadian Export Antitrust Litig.*, 03-md-1532 (D. Me.), one of the largest antitrust class actions in history. He has been appointed to leadership positions in class actions pending in this District: *In re Online DVD Rental Antitrust Litig.*, 09-md-2029 (PJH) (N.D. Cal.) (Plaintiffs Steering Committee), and *Trabakoolas v. Watts Water Technologies, Inc.*, 4:12-cv-01172-YGR (Plaintiffs' Steering Committee and Liaison Counsel), and *ODD* (Plaintiffs' Steering Committee). Mr. Seaver also represents the California Public Employees' Retirement System in its landmark litigation against the credit rating agencies Moody's and Standard & Poor's, *California Public Employees' Ret. Sys. v. Moody's*, No. CGC-09-490241 (Super. Ct. San Francisco County). *Id.*

D. The Proposed Co-Leads Have Conducted Significant Research in Identifying and Investigating Current and Potential Claims.

Prior to drafting their complaints, Pearson Simon, Saveri & Saveri, and Berman DeValerio each conducted extensive independent investigation and analysis into the lithium ion batteries market generally, the defendants, and the allegations of collusion. *See e.g.*, Simon Decl., ¶ 21. Counsel retained consultants experienced in economic analysis of antitrust violations to review economic trends, combed through SEC filings and the like to unravel the web of corporate identities utilized by defendants, and uncovered evidence tending to show that defendants likely engaged in collusive behavior. *Id.* The allegations in the complaints filed by Pearson Simon,

1 Saveri & Saveri, and Berman DeValerio reflect this extensive analysis and demonstrate these
 2 firms' willingness to invest significant time and resources to prosecuting this case.

3 **E. The Court Should Appoint Zelle Hofmann as Liaison Counsel**

4 In the CMC Order, the Court ordered the parties to seek consensus of the selection of a
 5 candidate for the position of Liaison Counsel who will be charged with administrative matters.
 6 Again, while complete consensus has not been reached, the proposed co-leads on behalf of 23 of
 7 the 25 cases support the appointment of Zelle Hofmann as Liaison Counsel. Ms. Judith Zahid will
 8 serve as the primary contact person for the Court with respect to administrative matters handled by
 9 Liaison Counsel.

10 **Zelle Hofmann**

11 Zelle Hofmann is a 65-attorney firm, with offices in San Francisco, Dallas, Minneapolis,
 12 Boston, Washington, D.C., London, and an affiliated office in Beijing. Zelle Hofmann attorneys
 13 have been practicing antitrust litigation and counseling individual and corporate clients for over 45
 14 years. The firm represents plaintiffs and defendants in price-fixing, monopolization, restraint of
 15 trade, and other commercial litigation, on behalf of classes, individual clients, and major
 16 corporations. The firm has a national reputation for its trial and litigation skills, as well as for
 17 resolving highly complex disputes on a national and international basis. *See* the Zelle Hofmann
 18 firm resume, attached as Exhibit 1 to the Declaration of Judith A. Zahid in Support of Application
 19 for Appointment of Pearson, Simon & Warshaw, LLP, Saveri & Saveri, Inc., and Berman
 20 DeValerio as Interim Co-Lead Counsel for Direct Purchaser Plaintiffs, and Zelle Hofmann
 21 Voelbel & Mason LLP as Liaison Counsel ("Zahid Decl.").

22 Zelle Hofmann has extensive experience in litigation and trials, including technology-
 23 intensive antitrust class actions. In fact, Zelle Hofmann attorneys are either Lead, Co-Lead, or
 24 Liaison Counsel in many of the other so-called "electronics cases" pending in this District: (1)
 25 *DRAM* (Liaison Counsel; settled for over \$309 Million); (2) *SRAM* (IPP Sole Lead Counsel;
 26 settled for \$41.3 Million); (3) *TFT-LCD* (IPP Co-Lead Counsel; settled for \$1.1 Billion, all cash);
 27 *In re Graphics Processing Antitrust Litig.*, MDL No. 1827; and (4) *Flash* (IPP Co-Lead Counsel).
 28 They have also played major roles in other computer industry litigation such as *CRT*, *In re Intel*

1 *Corp. Microprocessor Antitrust Litig.*, MDL No. 1717 (D. Del.), *Microsoft Corp. Antitrust Litig.*,
 2 MDL No. 1332 (D. Md.); *Microsoft Cases*, J.C.C.P. No. 4106 (San Francisco Superior Court)
 3 (Liaison Counsel and Chair of Executive Committee; settled the case on the eve of trial for \$1.1
 4 billion); *Microsoft Antitrust Litig.* (Hennepin Co. Dist. Ct., Minn.) (Co-Lead counsel; settled the
 5 matter after six weeks at trial for \$175 million); *Microsoft Antitrust Litig.* (Polk Co. Dist. Ct.,
 6 Iowa) (Co-Lead Counsel; reached a settlement close to \$180 million after three months of trial);
 7 *Microsoft Antitrust Litig.* (Milwaukee Co. Dist. Ct., Wis.) (Co-Lead Counsel; reached a settlement
 8 close to \$224 million). Zelle Hofmann has achieved significant results in numerous of these and
 9 other cases. *See* Zahid Decl., Ex. 1.

10 In addition to demonstrating its willingness to commit its substantial resources to this
 11 litigation, as well as its knowledge and experience, Zelle Hofmann brings a proven ability to work
 12 cooperatively with all other counsel. In his recent Supplemental Report and Recommendation in
 13 the *LCD Antitrust Litigation*, Special Master Martin Quinn emphasized Zelle Hofmann's unique
 14 ability to cooperate with all counsel:

15 It was primarily the Zelle firm that led the strategy and made it
 16 possible to obtain the victories that enabled the case to be
 17 successfully settled. The Zelle firm **organized** and **coordinated** the
 18 IPP group, and **harmonized** the IPP effort with the Direct-Purchaser
 Plaintiffs, the Direct Action Plaintiffs and the State Attorneys
 General...[**Zelle lawyers**] **were the indispensable force that made**
the IPP effort all work cohesively.³

19 Zelle Hofmann partners, Francis O. Scarpulla and Judith A. Zahid, will handle much of the
 20 litigation responsibilities, assisted by partners Craig C. Corbitt and Christopher T. Micheletti,
 21 associate attorney Patrick B. Clayton, and National E-Discovery Counsel, Eric P. Mandel. *See*
 22 Zahid Decl., Ex. 1.

23 **Francis O. Scarpulla**

24 In his over forty-five year career as a legal practitioner, Mr. Scarpulla has handled over
 25 _____

26 ³ *TFT-LCD*, MDL No. 1827 (Dkt. No. 7375), Supplemental Report and Recommendation of
 27 Special Master re: Allocation of Attorneys' Fees in the Indirect-Purchaser Class Action, pp.
 28 24:18–25:7 (emphasis added). Zahid Decl., Ex. 2.

1 140 antitrust matters on behalf of corporate and individual plaintiffs, having tried as the sole trial
 2 attorney a number of antitrust cases, including three in this District. Mr. Scarpulla was the pioneer
 3 in establishing the California laws governing indirect-purchaser class action litigation. Mr.
 4 Scarpulla has also been a leader in federal antitrust cases throughout the nation, and was
 5 nominated by his fellow lawyers to the “Best Lawyers in America” listing. He was honored by
 6 being named the 2005 “Antitrust Attorney of the Year” by the Antitrust Section of the California
 7 State Bar. Mr. Scarpulla served as chairman of the Antitrust and Trade Regulation Section of the
 8 State Bar of California in 1991, and is also a co-author of the Section’s treatise, California State
 9 Antitrust and Unfair Competition Law. Mr. Scarpulla has been named a California “Super
 10 Lawyer” several years in a row; and was named one of the Top 100 Lawyers in California in 2012.
 11 He received a California Lawyer Attorney of the Year award in 2013 for his work in the LCD
 12 antitrust cases.

13 In his recent *LCD* Report and Recommendation, Special Master Quinn said of Mr.
 14 Scarpulla:

15 The Zelle Hofmann firm, and co-lead counsel Francis Scarpulla,
 16 were the engines that primarily drove the IPP effort to a successful
 17 conclusion...During mediation, Mr. Scarpulla set the tone and led
 18 the strategy to obtain the excellent settlements...As co-lead counsel,
 19 Mr. Scarpulla played precise [sic] the role expected of him, and
 according to every lawyer and mediator I spoke to, did so superbly.
 A not insignificant part of his job was to mesh the efforts of the two
 teams of lawyers, and to mollify the demands and objections of his
 co-lead counsel...

20 Zahid Decl., Ex. 2., pp. 24:15-25:10.

21 **Judith A. Zahid**

22 Ms. Zahid is a partner at Zelle Hofmann, the Chair of the Antitrust Section of the San
 23 Francisco Bar Association, and a Civil Redress Task Force member of the Antitrust Division,
 24 American Bar Association, devoting her practice to antitrust and unfair competition cases. Since
 25 2009, Ms. Zahid has been selected each year as a Northern California “Rising Star” in Antitrust,
 26 and in 2012, she was named an Antitrust “Super Lawyer”.

27 Ms. Zahid played a critical role in the successful prosecution of the *TFT-LCD* case. She
 28 was responsible for substantial strategizing and briefing of class certification and decertification,

1 and took the lead on opposing the *Daubert* motion, both on the brief and at oral argument. Ms.
 2 Zahid was also central to many of the merits and expert discovery efforts, including: supervising
 3 and organizing the electronic review of over 8 million documents in both English and several
 4 foreign languages; negotiating and collecting all defendant data; overseeing the efforts to obtain
 5 third-party data; and taking and defending several depositions, including of economic and other
 6 experts. In addition, she was primarily responsible for the day-to-day coordination of all parties in
 7 the discovery, briefing, and trial preparation efforts. Ms. Zahid not only organized and helped
 8 direct the group of indirect-purchaser plaintiffs' counsel, but also was instrumental in aligning the
 9 efforts of the indirect-purchaser team with those of the direct-purchaser and direct action plaintiffs.
 10 Ms. Zahid's professional relationships with antitrust counsel made through her local and national
 11 bar association activities foster an ability to work cooperatively with both co-counsel and
 12 opposing counsel. Ms. Zahid has also developed professional relationships in the local and
 13 national bars through her active participation in Women in Law Empowerment Forum (WILEF),
 14 where she serves on the National and West Coast Boards. Ms. Zahid is well qualified to perform
 15 the role of Liaison Counsel for the Direct Purchaser Plaintiffs.

16 **IV. CONCLUSION**

17 For the foregoing reasons, Bruce L. Simon of Pearson, Simon & Warshaw, LLP, R.
 18 Alexander Saveri of Saveri & Saveri, Inc., and Joseph J. Tabacco, Jr. of Berman DeValerio
 19 respectfully request appointment as interim co-lead class counsel for DPPs, and as Plaintiffs'
 20 Steering Committee. Furthermore, they respectfully request that the Court appoint Zelle Hofmann
 21 as Liaison Counsel.

1 By: /s/ Robert G. Retana

2 Robert G. Retana

By: /s/ R. Alexander Saveri

R. Alexander Saveri

3 Bruce L. Simon

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13 By: /s/ Joseph J. Tabacco

14 Joseph J. Tabacco

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